

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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UNITED STATES OF AMERICA

Criminal No. 22-366 (WMW)

Plaintiff,

v.

**DEFENDANT'S POSITION PLEADING  
AND MOTION FOR DOWNWARD  
VARIANCE**

BERNARD JAMES BENAVIDEZ,

Defendant.

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**INTRODUCTION**

Defendant Bernard James Benavidez is before the Court awaiting sentencing after having pled guilty to Making and Subscribing a False Tax Return, in violation of 26 U.S.C. § 7206(1). The Presentence Report (PSR) assigns Mr. Benavidez a total offense level of 13, a criminal history category of I, resulting in a sentencing guideline range of 12 to 18 months. After consultation with Senior U.S. Probation Officer, Leah D. Heino, the parties agree that Mr. Benavidez would qualify for a two-point reduction in his offense level under the proposed amendment to the Sentencing Guidelines represented in the proposed new § 4C1.1, because he has zero criminal history points. Accordingly, Mr. Benavidez guideline range would be 8 to 14 months if that proposed guideline was applied. At the sentencing hearing the parties will jointly move for a downward variance of two levels recognizing Mr. Benavidez's qualification for this proposed amendment.

For the reasons stated below, Mr. Benavidez, through his attorney moves the Court for a downward variance pursuant to 18 U.S.C. 3553(a) and the referenced stipulation of the parties and requests a sentence of probation.

### **THE BACKGROUND OF MR. BENEVIDEZ**

Mr. Benavidez is Hispanic and Mescajero Apache Indian (PSR F.2). Mr. Benavidez is 61 years old and lives with his wife, Sarah, in their family home in Rochester, Minnesota. They raised two children, Katelyn Johnson (age 30) and Colton Benavidez (age 27). (PSR ¶ 36) Mr. Benavidez was the youngest of 8 children, born in Colorado and raised in different states from Colorado to Texas and Illinois (PSR ¶ 33). Though relatively poor, Mr. Benavidez had a normal, happy upbringing (PSR ¶ 31) His parents divorced after Mr. Benavidez graduated from high school. They both died over 15 years ago (PSR ¶ 34). Today, Mr. and Mrs. Benavidez share their home with Mr. Benavidez's mother-in-law, who is undergoing treatment for pancreatic cancer at the Mayo Clinic (PSR ¶ 39). Mr. Benavidez is a wonderful dad and husband and has always put his family first (PSR ¶ 37 & 38).

Mr. Benavidez studied to become a goldsmith and eventually came to work for, then purchase and operated Master Jewelers in Rochester, Minnesota (PSR ¶ 7 & 38). Mr. Benavidez has a reputation as an excellent, creative goldsmith that cares for his customers. Mr. Benavidez regularly contributes free services to U. S. military veterans and is invested in his local community (PSR ¶ 38)

This is Mr. Benavidez's first criminal violation of any kind (PSR ¶ 26 – 32).

**MR. BENAVIDEZ SHOULD RECEIVE A DOWNWARD VARIANCE CONSIDERING  
THE FACTORS SET FORTH IN 18 U.S.C. 3553 (a).**

**A. A Departure is Warranted Because of Mr. Benavidez's Immediate and Ongoing  
Acceptance of Responsibility**

Mr. Benavidez immediately took steps to plead guilty to the Information as soon as he was charged, setting his plea as soon as the parties and Court were available for his appearance. He agreed without challenge to pay the full amount demanded in restitution to the IRS. He will appear at sentencing with at least fifty thousand dollars (\$50,000) that he has been saving towards that restitution commitment.

**B. Mr. Benavidez's History and Character Also Support a Downward Variance**

In determining an appropriate sentence the court must consider "the fullest information possible concerning the defendant's life and characteristics.: *Pepper v United States*, 562 U.S. 476 (2011). Mr. Stately stands before the Court with strong family support including his wife, his children, and extended family. Further, he comes before this Court with shame and humiliation. Mr. Benavidez has been a dedicated member of his community. He has been a tireless supporter of our military. He is a dedicated family man.

Mr. Benavidez, also presently assists in the daily care of his mother-in-law who lives with him and his wife as she goes through serious cancer treatment.

As described by Ms. Finke, the only other employee of Master Jewelers, the store could not continue to operate if both of them were not able to be present on a daily basis.

**C. The Need to Reflect the Seriousness of the Offense, to Promote Respect for the Law, and to Provide Just Punishment for the Offense; the Need to Afford Adequate Deterrence to Criminal Conduct; the Need to Protect the Public From Further Criminal Conduct Lends Support For a Downward Variance.**

Based on Mr. Benavidez's crime-free life, his superb character, his kindness to all others and his sincere remorse, the fact that he will now face his community, his military friends, and his family as a convicted felon, a tax cheat, will punish him immensely.

**CONCLUSION**

Based on Mr. Benavidez's history and characteristics he deserves a downward variance.

**WOLD LAW**

Dated: July 7, 2023.

s/ Peter Wold  
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